

# Committee on Natural Resources

Rob Bishop, Chairman  
Markup Memorandum

March 14, 2016

To: All Natural Resources Committee Members

From: Majority Committee Staff, Spencer Kimball  
Subcommittee on Federal Lands, (x6-7736)

Markup: H.R. 1838 (Rep. Sam Farr), To establish the Clear Creek National Recreation Area in San Benito and Fresno Counties, California, to designate the Joaquin Rocks Wilderness in such counties, to designate additional components of the National Wild and Scenic Rivers System, and for other purposes.  
**March 15 and 16, 2016; 1324 Longworth HOB.**

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## **H.R. 1838 (Rep. Sam Farr), “*Clear Creek National Recreation Area and Conservation Act*”**

### **Bill Summary**

H.R. 1838, introduced by Rep. Sam Farr (D-CA-20), would designate approximately 75,000 acres of Bureau of Land Management (BLM) land in California, known as the Clear Creek Management Area (CCMA), as the “Clear Creek National Recreation Area” (CCNRA). It would also designate approximately 21,000 acres of BLM land adjacent to the CCMA as the “Joaquin Rocks Wilderness,” designate approximately 31.3 miles of creek segments located on BLM lands adjacent to the CCMA under the Wild and Scenic Rivers Act, and release the 1,500 acre San Benito Wilderness Study Area back into multiple-use.

### **Cosponsors**

Rep. Paul Cook (R-CA-08), Rep. Jeff Denham (R-CA-10), and Rep. David Valadao (R-CA-21).

### **Background**

In 2008, the U.S. Environmental Protection Agency (EPA) found that naturally occurring asbestos (NOA) in the CCMA’s serpentine soils posed a significant public health risk, particularly to off-highway vehicle (OHV) users. Later that year, BLM temporarily closed the CCMA and initiated a process to develop a long-term plan governing recreational uses in the area. In 2014, BLM issued a Record of Decision (ROD) for a plan that closed the 30,000 acre Serpentine Area of Critical Environmental Concern (ACEC), once considered a premier OHV recreational site within the CCMA, to all OHV use.

In 2010, the State of California’s Off Highway Motor Vehicle Recreation (OHMVR) Division commissioned an independent risk assessment of NOA exposure within the Serpentine ACEC of the CCMA. This report, completed by the International Environmental Research

Foundation, found that the health risk to OHV users from NOA is minimal.<sup>1</sup> Citing this report, local communities, OHV groups, and others urged BLM to reopen the area to recreational use and develop a management strategy that properly mitigates the exposure of higher than acceptable levels of NOA and resultant risks to human health.

To accomplish this, H.R. 1838 requires BLM to reopen the CCMA for recreational use and re-designate the area as a National Recreation Area. It also requires BLM to develop a plan to minimize the risk from NOA exposure and to educate visitors about its associated health risks. BLM would also be required to reduce the impact of OHVs to protect the area's habitat.

The bill requires BLM to utilize and update a prior travel management plan for the area while the permanent management plan is developed. In this permanent plan, BLM would be required to levy a recreational user fee and apply the proceeds to the management of OHV recreation and to contract with qualified state or local government agencies to manage all or a portion of the CCNRA's recreational activities.

H.R. 1838 also designates five creek segments located within Monterey County under the Wild and Scenic Rivers Act. None of these segments are within the designated zone for OHV use. The bill designates approximately 21,000 acres of BLM land adjacent to the CCMA and located in Fresno County as the "Joaquin Rocks Wilderness" and releases the 1,500 acre San Benito Wilderness Study Area, which currently has no public access and has been determined by BLM to be unsuitable for Wilderness designation, back into multiple-use.

## **Major Provisions of the Bill**

### **Section 1 – Short Title**

### **Section 2 – Definitions**

**Section 3** – Designates the Clear Creek Management Area as the "Clear Creek National Recreation Area." The boundary of the CCNRA follows the existing boundaries of the Clear Creek Management Area, which is approximately 75,000 acres, 60,000 acres of which are federally owned.

**Section 4** – Provides for the short and long term management of the CCNRA for off-highway vehicle (OHV) recreation and other purposes.

- Directs BLM to reopen the CCNRA for OHV recreation and facilitate other recreational activities and issue special recreation permits.
- Directs BLM to use previous BLM planning documents in tandem with more recent information as the basis for an interim OHV management plan while it develops a comprehensive long-term OHV management plan. The long-term plan must include a hazards education program, institute a user fee program for motorized vehicle use and

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<sup>1</sup> [\*Preliminary Analysis of the Asbestos Exposures Associated with Motorcycle Riding and Hiking in the Clear Creek Management Area \(CCMA\) San Benito County, California.\*](#) International Environmental Research Foundation. March 8, 2011.

guidelines for the use of funds collected, and designate a minimum level of trails and roads for OHV recreation.

- Allows for the acquisition of property from willing sellers, donation or exchange to improve recreational access.
- Requires BLM to provide adequate access to private inholdings within the CCNRA and prevents reservation of water rights by the United States.
- Does not limit hunting or fishing within the CCNRA or the jurisdiction authority of the State of California to manage wildlife or fish under State law.
- Allows for the grazing of livestock within the CCNRA, subject to the Federal Land Policy and Management Act and any regulations promulgated by the Secretary.
- Withdraws, subject to valid existing rights, mineral and geothermal leasing within the CCNRA.
- Exempts the management of the CCNRA from the National Oil and Hazardous Substances Pollution Contingency Plan.
- Gives the BLM the authority to enter into cooperative agreements with state or local government agencies to manage all or a portion of the CCNRA's recreational activities.

**Section 5** – Designates approximately 21,000 acres of BLM land in Fresno and San Benito Counties located immediately east of the CCNRA as the “Joaquin Rocks Wilderness Area.”

**Section 6** – Designates approximately 31.3 miles of five creek and river segments located within CCNRA as Wild and Scenic Rivers.

**Section 7** – Releases the 1,500 acre San Benito Wilderness Study Area.

### **Cost**

A Congressional Budget Office cost estimate has not yet been completed for this bill.

### **Administration Position**

During testimony at a December 2015 legislative hearing, BLM conveyed general support for the conservation designations in the bill but relayed concerns that changes in management could increase the exposure of public land users and employees to NOA.<sup>2</sup>

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<sup>2</sup> Statement of Kristin Bail, Assistant Director, National Landscape Conservation System & Community Partnerships, Bureau of Land Management, Department of the Interior, before the House Natural Resources Committee, Subcommittee on Federal Lands on H.R. 1838, Clear Creek National Recreation Area & Conservation Act. December 9, 2015.

### **Effect on Current Law**

H.R. 1838 amends Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) by adding at the end the following paragraphs:

`( ) LARIOUS CANYON- The approximately 5.25 miles of Larios Canyon Creek from its source near Idria Peak in Section 6, R12E, T18S, to the boundary of the Clear Creek Special Recreation Management Area in Section 23, R11E, T17S.

`( ) SAN CARLOS CREEK- The approximately 5.51 miles of the East Fork San Carlos Creek from its source near San Benito Mountain in Section 10, R12E, T18S, to the boundary of the Clear Creek Special Recreation Management Area in Section 22, R12E, T17S.

`( ) CANTUA CREEK- The approximately 7.68 miles of Cantua Creek from its source north of Santa Rita Peak in Section 24, R12E, T18S, to the public land boundary in Section 3, R13E, T18S.

`( ) PICACHO CREEK- The approximately 2.65 miles of Picacho Creek, from its source spring in Section 20, R12E, T18S, to its confluence with the San Benito River.

`( ) WHITE CREEK AND TRIBUTARIES-

`(A) The approximately 5.37 miles of White Creek, from its source in Section 36, R12E, T18S, to the boundary of the Clear Creek Special Recreation Management Area in Section 17, R13E, T19S.

`(B) The approximately 2.29 miles of the unnamed tributary of White Creek from its source just south of Spanish Lake in Section 29, R13E, T18S, to its confluence with White Creek.

`(C) The approximately 2.45 miles of the unnamed tributary of White Creek from its source in Section 33, R13E, T18S, to its confluence with White Creek.'.

### **Cost**

A Congressional Budget Office cost estimate has not yet been completed for this bill.

### **Anticipated Amendments**

During markup, Rep. Jeff Denham will offer an amendment that requires BLM to consult with holders of easements, rights-of-way, and other valid rights in the CCNRA when developing the comprehensive management plan under Sec. 4(d). The amendment also removes removes the Wild and Scenic River designations under Section 6 due to concerns from local stakeholders and adds a reference to a map of the area under Section 3.